

COMMISSIONERS JOURNAL NO. 46 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 7, 2005

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present: Glenn A. Evans, James D. Ward
Absent: Kristopher W. Jordan

7:30 PM Public Hearing For Consideration Of A Ditch Petition Filed By Jamie Stabl And Others For The Parkshore Sections 1-2-4 Subdivision Ditch Maintenance Project

PUBLIC COMMENT

Mr. Matt Montague spoke to the commissioners representing the organization that is opposed to the Sawmill Parkway extension. He explained the steps they are taking to try to prevent the project from proceeding.

RESOLUTION NO. 05-264

IN THE MATTER OF APPROVING THE RESOLUTIONS AND RECORDS OF THE PROCEEDINGS FROM REGULAR MEETING HELD MARCH 3, 2005 AS CONTAINED IN THE COUNTY’S OFFICIAL ELECTRONIC RECORDINGS OF THE PROCEEDINGS:

It was moved by Mr. Evans, seconded by Mr. Ward to approve the resolutions and records of the proceedings from regular meeting held March 3, 2005 as contained in the county’s official electronic recordings of the proceedings.

Vote on Motion: Mr. Jordan Absent Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 05-265

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR034 :

It was moved by Mr. Evans, seconded by Mr. Ward to approve payment of warrants in batch numbers CMAPR 034 and Purchase Orders and Vouchers as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
Delaware County	Indirect Costs	22411605-5380	\$ 306,400.00
Delaware County	Telephone Reimbursement	22411605-5330	\$ 7,800.00
Delaware County	Postage Reimbursement	22411605-5331	\$ 23,500.00
Bruner Corporation	Plumbing-HVAC Jail	40411414-5410	\$ 876,309.00
Schindler Elevator Corporation	Elevators Jail	40411414-5410	\$ 92,800.00
Delaware Area Career Center	Resource Center	22311611-5348	\$ 5,561.39
Jobs for Ohio Graduates	Training	22311611-5348	\$ 30,838.36
Vouchers			
The Coop, LLC	Equipment for Coop		
	Restaurant	23111709-5365	\$ 28,387.42
Bruner Corporation	Plumbing-HVAC Jail	40411414-5410	\$ 145,000.00
Bruner Corporation	Plumbing-HVAC Jail	40411414-5410	\$ 13,046.40
Scott Scriven, & Wahoff	Professional Services	23711630-5301	\$ 6,209.15

Vote on Motion: Mr. Evans Aye Mr. Ward Aye Mr. Jordan Absent

RESOLUTION NO. 05 -266

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mr. Evans , seconded by Mr. Ward to approve the following:

Administrative Services is requesting that Steve Savon attend the Delaware Safety Council Meetings held monthly at various locations at a cost of \$100.00

Administrative Services is requesting that Steve Savon attend BWC Ohio Safety Congress Expo at Columbus on March 29 – 31 at a cost of \$60.00.

Larry Fisher is requesting that Amy Tormasi, Dan Maurer, Matt Fletcher, Jenna Burke and Lisa Sessley attend the Dispatcher Inservice Training at Mercer County Sheriff’s Office on March 29, 2005 at no cost.

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Adult Court Services is requesting that Melinda Bettac, Kara Clark, Robin Halliwell, Mark Taglione, and Erin Cook attend a "Gang Investigation" Training at London, Ohio on May 18, 2005 at a cost of \$250.00.

Adult Court Services is requesting that Kara Clark, Jeff Vanderborne, Erin Cook, Mark Taglione, Scott Ritter, Robin Halliwell, Melinda Bettac attend "Street Drug" Training at London, Ohio on May 16, 2005 at a cost of \$350.00

Adult Court Services is requesting that Jeff Vandeborne attend "Personal Safety Training" at London, Ohio on October 4, 2005 at a cost of \$100.00.

Adult Court Services is requesting that Erin Cook, Kara Clark, Melinda Bettac attend a "Spanish for Law Enforcement" Training at London, Ohio on June 20-22 at a cost of \$450.00.

Adult Court Services is requesting that Kara Clark attend "Dealing with the Suicidal" Training at London, Ohio on November 7, 2005 at a cost of \$50.00

Adult Court Services is requesting that an additional cost be added to a previously approved travel for Kara Clark to attend the Department of Justice Management Development training at Longmont on March 13-19, 2005, additional cost of \$22.75 for mileage.

Vote on Motion: Mr. Ward Mr. Jordan Mr. Evans

RESOLUTION NO. 05-267

IN THE MATTER OF APPROVING SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN THE VILLAGE OF GALENA AND THE DELAWARE COUNTY COMMISSIONERS FOR THE SALE OF THE GALENA SEWER TREATMENT PLANT WITH ASSOCIATED FIXTURES, EQUIPMENT AND MACHINERY

It was moved by Mr. Evans, seconded by Mr. Ward to approve the following:

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the "Settlement Agreement") is made and entered into this 7TH day of March 2005, by, for and on behalf of the Village of Galena, Ohio (hereinafter "Galena"), and the Board of County Commissioners of Delaware County, Ohio (hereinafter "the Board"), collectively referred to as "the parties".

RECITALS

- A. The Village of Galena owns property situated in the Village of Galena, County of Delaware, State of Ohio, consisting of 2.498 acres of land, more or less, and further described in Exhibit "A," attached hereto, made a part hereof, and incorporated herein by reference.
- B. A sewer treatment plant with associated fixtures, equipment and machinery is situated on the property identified in Exhibit "A" that is attached hereto.
- C. Galena desires to purchase the sewer treatment plant, the Board's interest in Galena's sewer collection system, if any, and the Board's interest in the real estate, fixtures and machinery and equipment, related to the sewer treatment plant, except any property identified on Exhibit B that is attached hereto, and including any contract rights identified on Exhibit C that is attached hereto, (hereinafter collectively referred to as the "Property"), for the purpose of owning, operating, and maintaining a public sewer system for Galena and to incorporate the subject property into Galena's public sewer system.
- D. The Board currently owns a fee simple interest in the Property that is subject to a reversionary possibility pursuant to an Agreement dated as of December 3, 1993.
- E. On or about June 2, 2004 Galena filed a Complaint for Appropriation of Real Property, Case No. 04-CV-H-06-374 in the Delaware County Common Pleas Court (the "Lawsuit").
- F. The parties deem it prudent and advisable, in lieu of spending further time and expense, to settle all disputes and claims of whatsoever kind and nature pertaining to the Lawsuit.
- G. The parties wish to enter into this Settlement Agreement and Mutual Release in order to provide for the full settlement and discharge of all claims which have or might be made against the parties, by reason of the Lawsuit, above, upon the terms and conditions set forth below.

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- H. The parties declare that the provisions, terms and conditions set forth herein are the result of comprehensive, thorough negotiations undertaken in good faith.

NOW, THEREFORE, in consideration of the mutual and reciprocal obligations and undertakings hereinafter set forth, the parties agree as follows :

1.0 **Release and Discharge**

- 1.1 Galena, on behalf of its past, present and future Mayors, members of Council, officers, department heads, attorneys, agents, servants, representatives, employees, successors and assigns, both known and unknown, does hereby forever release, requite, and discharge the Board, its officers, department heads, attorneys, agents, servants, representatives, employees, successors and assigns, both known and unknown, from any and all charges, claims, demands, expenses, costs, attorneys' fees, and liabilities of any kind whatsoever, whether known or unknown, suspected or unsuspected, vested or contingent, in law or in equity or otherwise, which Galena has ever had, now has, or may have against the Board for or on account of any matter, cause or thing whatsoever arising out of or in any way relating to the sale of the Property and the Lawsuit and which has existed or occurred on or prior to the effective date hereof, including, but not limited to, any and all claims that could have been brought by any of the parties in any forum whatsoever.
- 1.2 The Board, on behalf of its past, present and future agents, officers, department heads, attorneys, agents, servants, representatives and employees, successors and assigns, both known and unknown, does hereby forever release, requite, and discharge Galena, its past, present and future Mayors, members of Council, officers, department heads, attorneys, agents, servants, representatives, employees, successors and assigns, both known and unknown, from any and all charges, claims, demands, expenses, costs, attorneys' fees, and liabilities of any kind whatsoever, whether known or unknown, suspected or unsuspected, vested or contingent, in law or in equity or otherwise, which the Board has ever had, now has, or may have against Galena for or on account of any matter, cause or thing whatsoever arising out of or in any way relating to the sale of the Property and the Lawsuit and which has existed or occurred on or prior to the effective date hereof, including but not limited to any and all claims that could have been brought by any of the parties in any forum whatsoever.
- 1.3 This Settlement Agreement shall be a fully binding and complete settlement with respect to the matters set forth above among the parties, their officers, directors, members, elected and appointed officials, agents, servants, representatives and employees, both known and unknown, assigns and successors in interest.
- 1.4 The parties acknowledge and agree that the release and discharge set forth herein is a mutual release. The parties expressly waive and assume the risk of any and all claims or damages which exist as of this date, but of which the parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect the parties' decision to enter into this Settlement Agreement. The parties further agree that the parties will accept the terms of the settlement specified herein as a complete compromise of matters involving disputed issues of law and fact related to the Lawsuit. The parties assume the risk that the facts or law may be other than they presently believe.
- 1.5 It is understood and agreed by the parties that this settlement is a compromise of a disputed claim, and that neither the settlement, nor the presentation or execution of this Settlement Agreement, are to be construed as an admission of liability on any theory or in any manner whatsoever on the part of parties.
- 1.6 The parties and their attorneys declare and represent that it is understood and agreed that the parties are relying wholly upon their own judgment, belief and knowledge of the nature and extent and the effect and duration of potential damages and liability therefore and that the Settlement Agreement is made without reliance upon any statement or representation of the party or parties hereby released or their representatives.

2.0 **Terms**

- 2.1 Galena shall pay the Board of Commissioners the amount of \$350,000 in cash on or before May 1, 2005 (the "Payment Date"), but no later than the date that the Ohio Environmental Protection Agency authorizes the transfer of the NPDES permit (the "Transfer Date"), as and for the buyout of any and all of the Board's interest in the Property.

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- 2.2 Subject to Galena's payment and other obligations provided herein, the Board shall transfer, deliver possession and assign when paid on the Payment Date, its fee simple interest in the Property, and shall assign the contracts listed in Exhibit C.
- 2.3 Consistent with the assignment of contracts listed in Exhibit C on the Payment Date, any tap fees collected by the Board relating to the Property after the Payment Date shall be owned by Galena and not subject to payment or assignment to the Board.
- 2.4 All risk of loss relating to the Property will transfer to Galena on the Payment Date. If the Payment Date occurs prior to transfer of the NPDES permit to Galena, the Board will retain responsibility only for the following maintenance duties relating to the Property (collectively, the "Board's Maintenance Duties"): (1) daily sampling, testing and observation of the wastewater treatment process; (2) reporting to the Ohio EPA of sampling, testing and observation results; (3) oil, belt and filter changes that are deemed necessary by the Board; and (4) billing and administratively servicing all user accounts. The Board will not be responsible for anything other than the Board's Maintenance Duties after the Payment Date and will not be responsible for any maintenance relating to the Property after the Transfer Date. Following the Payment Date, Galena will assume full responsibility for any risk of loss, damage or fines relating to the Property, including, but not limited to the following: (1) Damage to all components, mechanical or otherwise, of the Property, for any reason, including, but not limited to, damage or failure of electric motors, diffusers, blowers, meters, pumps, trash traps, tanks, fences and outfall structures; and (2) EPA or other regulatory agency fines relating to the property other than any fines specifically assessed for the sole and stated reason that the Board did not perform the Board's Maintenance Duties.
- 2.5 Galena will be entitled to receive all maintenance fees collected relating to the Property following the Transfer Date, unless such fees relate to maintenance rendered by the Board on the Property prior to the Transfer Date. The Board will be entitled to receive all maintenance fees collected prior to the Transfer Date and all fees relating to services rendered by the Board that are collected after the Transfer Date.
- 2.6 The Property will be sold "as is" with no warranties as to the condition of the Property at the time of sale.
- 2.7 Upon the Payment Date, any and all of the Board's interests in the Property and assigned Contracts, other than any assessed maintenance fees collected prior the Transfer Date or relating to the time period prior to the Transfer Date, shall be forever extinguished.

3.0 Integration

This Settlement Agreement contains the entire agreement between the parties hereto and the terms of this Settlement Agreement are contractual and not a mere recital. No modification or amendment of this Settlement Agreement shall be binding on the parties unless agreed to in writing referring specifically to this Settlement Agreement and signed by the parties and the attorneys of each of the parties. The headings of the paragraphs and sections of this Settlement Agreement are provided solely for convenience of reference and shall not be used in the interpretation of this Settlement Agreement.

4.0 Attorneys' Fees

Each party hereto shall bear its own attorneys' fees, expenses and costs, taxable or otherwise, incurred or arising in connection with this Settlement Agreement, the matters and documents referred to herein and the Lawsuit. In the event that this Settlement Agreement or its subject matter becomes the subject of litigation between or among the parties or any of them, the prevailing party in such litigation shall be entitled to recover its reasonable attorneys' fees.

5.0 Warranty of Capacity to Execute Agreement

The parties represent and warrant each to the others that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein, and that the parties have the sole right and exclusive authority to execute this Settlement Agreement and receive the consideration specified in it.

6.0 Board's Representations and Warranties

- 6.1 The Board will make the following documents relating to the Property available to Galena for review and inspection upon reasonable notice prior to March 17, 2005 at the Olentangy Environmental Control Center, 10333 SR 315, Powell, Ohio:
1. All available correspondence between the Ohio EPA, vendors Ecology

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- Equipment and Barefoot & Case and the Board for the prior three years;
- 2. Operator daily observation data for 2003 and 2004; and
- 3. All available monthly operating reports that have been submitted by the Board to the Ohio EPA for the years 1995 to the present.

- 6.2 The Board will replace the existing sonic flow meter on the Property with a sonic flow meter substantially similar in quality and capacity.
- 6.3 The Board will cooperate with Galena to jointly submit any paperwork necessary for NPDES permit transfer.

7.0 Galena's Representations and Warranties

- 7.1 On May 1, 2005, or upon the date that the Ohio Environmental Protection Agency authorizes the transfer of the NPDES permit, whichever is later, Galena agrees to accept, assume and perform all the terms and conditions imposed upon the Board set forth in the Contracts listed on Exhibit C that is attached hereto.
- 7.2 Galena will promptly dismiss with prejudice the Lawsuit upon its failure to comply with the terms of this Agreement, upon the completion of the sale contemplated by Section 2 of this Agreement or upon the election by Galena not to purchase the Property as contemplated by Sections 8.1 or 8.2 of this Agreement.
- 7.3 At all times prior to or after transfer of the Property to Galena, Galena will not hire, employ or contract with any person employed by the Board or Delaware County, Ohio to provide design, operation or maintenance support in connection with the Property or Galena's design, operation or maintenance of any wastewater treatment plant or collection system.
- 7.4 Galena will cooperate with the Board to jointly submit any paperwork necessary for NPDES permit transfer.

8.0 Condition Precedent to the Performance of Galena

- 8.1 The obligation of the Board to sell the Property is subject to the satisfaction of the following condition not later than March 17, 2005 (which may be waived in whole or in part by agreement of Galena and the Board in writing on or before the March 17, 2005). Galena shall have until March 17, 2005 to have the subject property inspected and tested and to have any other environmental test(s) or inspection(s) conducted. Within 72 hours of such tests or inspections, Galena shall disclose the results of such tests or inspections, including any written reports, to the Board. The Board shall upon reasonable notice, cooperate in making the subject property available for inspection(s) or test(s). If Galena is not, in good faith, satisfied with the condition of the property as disclosed by the inspection(s) or test(s), Galena may elect not to purchase the Property by giving written notice of such election within five (5) business days of such tests or inspections to the Board.
- 8.2 In the event that the NPDES permit is not transferred from the Board to Galena by the Ohio Environmental Protection Agency, Galena may elect not to purchase the property by giving written notice of such election to the Board within five (5) business days of learning of such decision to not transfer by the Ohio Environmental Protection Agency. In that event, if necessary, the Board shall refund the purchase price of \$350,000, and Galena will refund to the Board any tap fees that it has collected to date and assign the contracts listed on Exhibit C back to the Board.

9.0 Terms of Settlement Agreement Contractual

- 9.1 The terms of this Settlement Agreement are contractual and not mere recitals. The parties acknowledge that they have been represented or have had the opportunity to be represented by attorneys of their choosing in connection with this Settlement Agreement, that they have read and understand the terms of this Settlement Agreement and that they are voluntarily entering into this Settlement Agreement, having read it and discussed or having had the opportunity to discuss it with their respective attorneys.

10.0 Applicable Laws

This Settlement Agreement shall be construed under the laws of the State of Ohio.

11.0 Notice

Any correspondence between the parties shall be addressed as follows:

To: The Village of Galena

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Mayor Thomas Hopper
9 West Columbus Street
P.O. Box 86
Galena, Ohio 43201
Telephone: (740) 965-2484
Fax: (740) 965-5424

AND

Kenneth J. Molnar
21 Middle Street
Galena, Ohio 43201
Telephone: (740) 965-3900
Fax: (740) 965-2718
Email: kmolnar1@columbus.rr.com

To: The Board of County Commissioners of Delaware County

Dave Cannon
County Administrator
101 N. Sandusky Street
Delaware, Ohio 43015
Telephone: (740) 833-2200
Fax: (740) 833-2099

AND

Delaware County Prosecuting Attorney
Civil Division
140 N. Sandusky Street
Delaware, Ohio 43015
Telephone (740) 833-2690
Fax (740) 833-2689

Each of the parties hereto shall hereafter notify the other of any change of address to which notice is required to be sent.

- 12.0

Waiver

No waiver of any term or provision of this Settlement Agreement shall be deemed effective unless such waiver is in writing and signed by the party to be charged with such waiver. The failure or delay of any party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any right under this Agreement.
- 13.0

Counterparts

This Settlement Agreement may be executed in counterparts. When each party and his or its attorneys have signed at least one such counterpart, each counterpart shall be deemed an original and, when taken together with the other signed counterparts, shall constitute one Agreement, binding as to all parties and signatories.
- 14.0

Further Assurances

Each party agrees it will execute and deliver, or cause to be executed and delivered, on or after the date of this Agreement, all such instruments necessary to enter into this Agreement including necessary legislation and will take all reasonable actions as may be necessary, on the terms herein contained, to consummate the transactions herein contained in order to effectuate the provisions and purposes of this Settlement Agreement and Mutual Release.
- 15.0

Severability

The invalidity of any provision of this Settlement Agreement or portion of a provision shall not affect the validity of any other provision of this Agreement or the remaining portion of the applicable provision.
- 16.0

Authority of Signatories

The signatories to this Settlement Agreement hereby warrant that they have authority, on behalf of their respective entities and/or principals, to enter into this Agreement.

Vote on Motion: Mr. Jordan Absent Mr. Evans Aye Mr. Ward Aye

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RESOLUTION NO. 05-268

IN THE MATTER OF APPOINTING RICHARD TRELEASE AS THE DELAWARE BOARD OF COUNTY COMMISSIONERS' REPRESENTATIVE TO THE DELAWARE COUNTY TRANSIT BOARD

It was moved by Mr. Evans seconded by Mr. Ward to approve the following:

- Whereas, The Board of Commissioners of Delaware County is responsible to make appointments from the public to various boards, councils and committees, and
- Whereas, the Board of Commissioners of Delaware County shall appoint Richard Trelease to the Delaware County Transit Board for a three year term beginning March 3, 2005, and ending December 31, 2008, and

Therefore, be it resolved that the Board of Commissioners at Delaware County, State of Ohio, shall appoint Richard Trelease to the Delaware County Transit Board for a three-year term.

Vote on Motion: Mr. Evans Aye Mr. Ward Aye Mr. Jordan Absent

RESOLUTION NO. 05-269

7:30 PM - PUBLIC HEARING FOR CONSIDERATION OF A DITCH PETITION FILED BY JAMIE STABL AND OTHERS FOR THE PARKSHORE SECTIONS 1-2-4 SUBDIVISION DITCH MAINTENANCE PROJECT:

It was moved by Mr. Evans , seconded by Mr. Ward to open the hearing at 7:35 PM.

Vote on Motion: Mr. Ward Aye Mr. Jordan Absent Mr. Evans Aye

RESOLUTION NO. 05-270

IN THE MATTER OF CLOSING THE PUBLIC HEARING FOR CONSIDERATION OF A DITCH PETITION FILED BY JAMIE STABL AND OTHERS FOR THE PARKSHORE SECTIONS 1-2-4 SUBDIVISION DITCH MAINTENANCE PROJECT:

It was moved by Mr. Evans, seconded by Mr. Ward to close the hearing at 7:50 PM.

Vote on Motion: Mr. Jordan Absent Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 05-271

IN THE MATTER OF DIRECTING THE DELAWARE COUNTY ENGINEER TO PROCEED WITH PREPARATION OF PLANS, REPORTS AND ASSESSMENTS FOR THE PARKSHORE SECTIONS 1-2-4 SUBDIVISION DITCH MAINTENANCE PROJECT FILED BY JAMIE STABL AND OTHERS:

It was moved by Mr. Ward, seconded by Mr. Evans to go forward with the project.

- Whereas, on November 9, 2004, a Ditch Petition to the purposed Parkshore Sections 1-2-4 Subdivision Ditch Maintenance Project was filed with the Delaware County Commissioners, and
- Whereas, the Board of Commissioners of Delaware County on March 7, 2005, held a public hearing to determine if the action is necessary, conducive to the public welfare, and the benefits derived exceed the cost incurred for the purposed Parkshore Sections 1-2-4 Subdivision Ditch Maintenance Project, and
- Whereas, after hearing testimony from property owners and the preliminary report of County Engineer, Chris Bauserman, the Board of Commissioners find the action is necessary, conducive to the public welfare, and the benefits exceed the estimated cost.

Therefore, Be It Resolved, The Delaware County Commissioners directs the Delaware County Engineer to proceed with the preparation of plans, reports and assessments as presented for the purposed Parkshore Sections 1-2-4 Subdivision Ditch Maintenance Project. Said information to be presented to the Commissioners at the end of this process.

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Further be it Resolved, upon receipt of this information a public hearing date will be set and proper notification given to property owners in the affected watershed.

Vote on Motion: Mr. Evans Aye Mr. Ward Aye Mr. Jordan Absent

There being no further business the meeting adjourned.

Glenn A. Evans

Kristopher W. Jordan

James D. Ward

Letha George, Clerk to the Commissioners